

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

SCOTT & WHITE MEMORIAL HOSPITAL,

Plaintiff,

V.

Civil Action No. 6:17-CV-0075

**COVENTRY HEALTHCARE, INC.,
COVENTRY HEALTHCARE NATIONAL
NETWORK, INC., COVENTRY HEALTH
AND LIFE INSURANCE COMPANY, FIRST
HEALTH LIFE AND HEALTH INSURANCE
COMPANY, FIRST HEALTH GROUP CORP.,
ARM LTD., NW, TDX POWER, INC., RON
PHILEMONOFF, AS TRUSTEE FOR THE
TANADGUSIX CORP HEALTH & WELFARE
TRUST, JULIANNA SHANE, AS TRUSTEE
FOR THE TANADGUSIX CORP HEALTH &
WELFARE TRUST, AND ROBERT DEAN
HUGHES, AS TRUSTEE FOR THE
TANADGUSIX CORP HEALTH & WELFARE
TRUST,**

Defendants.

TDX DEFENDANTS' ORIGINAL ANSWER

TO THE HONORABLE COURT:

Defendants TDX Power, Inc., Ron Philemonoff, as Trustee for the Tanadgusix Corp. Health & Welfare Trust, Julianna Shane, as Trustee for the Tanadgusix Corp. Health & Welfare Trust, and Robert Dean Hughes, as Trustee for the Tanadgusix Corp. Health & Welfare Trust (collectively, “the TDX Defendants”) file this Original Answer to the Original Petition filed by Plaintiff Scott & White Memorial Hospital (“Plaintiff”) as follows:

I.
ADMISSIONS & DENIALS

A. Answer to Discovery Control Plan

1. Paragraph 1 appears to state a legal conclusion, and therefore, can neither be admitted nor denied by the TDX Defendants.

B. Answer to Introduction

2. The TDX Defendants deny the allegations contained in paragraph 2.

3. The TDX Defendants lack sufficient information necessary to admit or deny the allegations contained in paragraph 3.

4. The TDX Defendants lack sufficient information to admit or deny the allegations contained in paragraph 4.

5. The TDX Defendants lack sufficient information concerning the terms of the Hospital Agreement to admit or deny the allegations contained in paragraph 5.

6. The TDX Defendants lack sufficient information to admit or deny the allegations contained in paragraph 6.

7. The TDX Defendants lack sufficient information to admit or deny the allegations contained in paragraph 7.

8. The allegations contained in paragraph 8 do not appear to require an admission or denial. To the extent a response is necessary, the TDX Defendants deny the allegations contained in paragraph 8.

C. Answer to Parties

9. The TDX Defendants admit the allegations contained in paragraph 9.

10. The TDX Defendants are without sufficient knowledge or information to form a belief about the truth of the allegation in paragraph 10, and therefore deny the same.

11. The TDX Defendants are without sufficient knowledge or information to form a belief about the truth of the allegation in paragraph 11, and therefore deny the same.

12. The TDX Defendants are without sufficient knowledge or information to form a belief about the truth of the allegation in paragraph 12, and therefore deny the same.

13. The TDX Defendants are without sufficient knowledge or information to form a belief about the truth of the allegation in paragraph 13, and therefore deny the same.

14. The TDX Defendants are without sufficient knowledge or information to form a belief about the truth of the allegation in paragraph 14, and therefore deny the same.

15. The TDX Defendants are without sufficient knowledge or information to form a belief about the truth of the allegation in paragraph 15, and therefore deny the same.

16. The TDX Defendants admit the allegation contained in the first sentence of paragraph 16. The remaining allegations contained in paragraph 16 appear to state a legal conclusion, and therefore, do not require an admission or denial. To the extent a response is necessary, the TDX Defendants deny the allegations contained in paragraph 16.

17. The TDX Defendants admit the allegation contained in the first sentence of paragraph 17. The remaining allegations contained in paragraph 17 appear to state a legal conclusion, and therefore, do not require an admission or denial. To the extent a response is necessary, the TDX Defendants deny the allegations contained in paragraph 17.

18. The TDX Defendants admit the allegation contained in the first sentence of paragraph 18. The remaining allegations contained in paragraph 18 appear to state a legal conclusion, and therefore, do not require an admission or denial. To the extent a response is necessary, the TDX Defendants deny the allegations contained in paragraph 18.

19. The TDX Defendants admit the allegation contained in the first sentence of

paragraph 19. The remaining allegations contained in paragraph 19 appear to state a legal conclusion, and therefore, do not require an admission or denial. To the extent a response is necessary, the TDX Defendants deny the allegations contained in paragraph 19.

D. Answer to Jurisdiction and Venue

20. Paragraph 20 appears to state a legal conclusion, and therefore, does not require an admission or denial.

21. Paragraph 21 appears to state a legal conclusion, and therefore, does not require an admission or denial. To the extent a response is necessary, the TDX Defendants deny the allegations contained in paragraph 21.

22. Paragraph 22 appears to state a legal conclusion, and therefore, does not require an admission or denial. To the extent a response is necessary, the TDX Defendants deny the allegations contained in paragraph 22.

23. Paragraph 23 appears to state a legal conclusion, and therefore, can neither be admitted nor denied by the TDX Defendants. To the extent a response is necessary, the TDX Defendants deny the allegations contained in paragraph 23.

E. Answer to Factual Background

24. The TDX Defendants admit the allegations contained in first sentence of paragraph 24. The TDX Defendants lacks sufficient information to admit or deny the allegations contained in the remaining sentences contained in paragraph 24.

25. The TDX Defendants lack sufficient information to admit or deny the allegations contained in paragraph 25.

26. The TDX Defendants are not parties to the Hospital Agreement, and therefore lack sufficient information to admit or deny the allegations contained in paragraph 26.

27. The TDX Defendants are not parties to the Hospital Agreement, and therefore lack sufficient information to admit or deny the allegations contained in paragraph 27.

28. The TDX Defendants lack sufficient information to admit or deny the allegations in the first and second sentences of paragraph 28. The TDX Defendants deny the allegations contained in the third, fourth, and fifth sentences of paragraph 28.

29. The TDX Defendants lack sufficient information to admit or deny the allegations contained in paragraph 29.

30. The TDX Defendants lack sufficient information to admit or deny the allegations contained in paragraph 30.

31. The TDX Defendants lack sufficient information to admit or deny the allegations contained in paragraph 31.

32. The TDX Defendants lack sufficient information to admit or deny the allegations in paragraph 32.

33. The TDX Defendants lack sufficient information to admit or deny the allegations contained in paragraph 33.

F. Answer to Causes of Action

(1.) Breach of Contract (against Coventry)

34. The TDX Defendants incorporate all of their previous responses.

35. The TDX Defendants lack sufficient information to admit or deny the allegations in paragraph 35. To the extent a response is necessary, the TDX Defendants deny the allegations contained in paragraph 35.

36. The TDX Defendants lack sufficient information to admit or deny the allegations in paragraph 36. To the extent a response is necessary, the TDX Defendants deny the allegations

contained in paragraph 36.

37. Paragraph 37 appears to state legal conclusions, and therefore, do not require an admission or denial. To the extent a response is necessary, the TDX Defendants deny the allegations contained in paragraph 37.

(2.) Breach of Contract (against Network Subscribers)

38. The TDX Defendants incorporate all of their previous responses.

39. The TDX Defendants deny the allegations contained in paragraph 38.

40. The TDX Defendants deny the allegations contained in paragraph 39.

41. The TDX Defendants deny the allegations contained in paragraph 41.

(3.) Attorney's Fees

42. The TDX Defendants incorporate all of their previous responses.

43. Paragraph 43 appears to state a legal conclusion, and therefore, does not require an admission or denial. To the extent a response is necessary, the TDX Defendants deny the allegations contained in paragraph 43.

G. Answer to Request for Disclosure

44. Paragraph 44 appears to state a legal conclusion, and therefore, does not require an admission or denial. To the extent a response is necessary, the TDX Defendants states that it will serve initial disclosure responses in accordance with the Federal Rules of Civil Procedure and this Court's requirements.

45. To the extent not expressly admitted above, the TDX Defendants deny all remaining allegations of material fact set forth in Plaintiff's Petition.

46. The TDX Defendants deny that Plaintiff is entitled to any of the damages requested in the Petition.

47. The TDX Defendants deny that Plaintiff is entitled to any of the relief requested in the Petition.

II.
AFFIRMATIVE DEFENSES

48. Plaintiff fails to state a claim upon which relief may be granted.

49. Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to comply with all conditions precedent required of it.

50. Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

51. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

52. Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations.

53. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

54. Plaintiff's claims are barred, in whole or in part, by a failure of consideration.

55. Plaintiff's claims are barred, in whole or in part, by a failure to mitigate damages.

56. If the TDX Defendants are found liable for damages, the TDX Defendants are entitled to an offset.

57. The TDX Defendants reserve the right to supplement or amend its Answer, including any defenses claimed herein, based upon factual information discovered during the pendency of this case.

PRAYER

For these reasons, Defendants TDX Power, Inc., Ron Philemonoff, as Trustee for the Tanadgusix Corp. Health & Welfare Trust, Julianna Shane, as Trustee for the Tanadgusix Corp. Health & Welfare Trust, and Robert Dean Hughes, as Trustee for the Tanadgusix Corp. Health & Welfare Trust ask the Court to enter judgment that Plaintiff Scott & White Memorial Hospital take

nothing, dismiss Plaintiff's suit with prejudice, assess costs against Plaintiff, and award the TDX Defendants all other relief the Court deems appropriate.

Respectfully submitted,

/s/ Christopher J. Schwegmann

Christopher J. Schwegmann

Texas Bar No. 24031515

cschwegmann@lynnllp.com

Joshua M. Sandler

Texas State Bar No. 24053680

jsandler@lynnllp.com

LYNN PINKER COX HURST, LLP

2100 Ross Avenue, Ste. 2700

Dallas, Texas 75201

(214) 981-3800 – phone

(214) 981-3829 – fax

**ATTORNEYS FOR DEFENDANTS TDX
POWER, INC., RON PHILEMONOFF, AS
TRUSTEE FOR THE TANADGUSIX CORP.
HEALTH & WELFARE TRUST, JULIANNA
SHANE, AS TRUSTEE FOR THE
TANADGUSIX CORP. HEALTH & WELFARE
TRUST, AND ROBERT DEAN HUGHES, AS
TRUSTEE FOR THE TANADGUSIX CORP.
HEALTH & WELFARE TRUST**

CERTIFICATE OF SERVICE

I certify that on May 12, 2017, a true and correct copy of this document was served on counsel of record via the Court's ECF system.

/s/ Christopher J. Schwegmann

Christopher J. Schwegmann